

Recommendation for Preliminary Adoption of Proposed New Rules for Prospecting in Waterways; Administrative Cause No. 08-105W

During its October 2007 meeting, the Advisory Council opened discussion of the regulation of stone and gravel extractions from rivers and streams. Richard Cockrum suggested the activity could have an adverse impact on fisheries and other wildlife, as well as on botanical resources. The DNR was requested to prepare a draft to address these activities, as well as hard mineral extraction activities (sometimes referred to as “prospecting”).

Ron McAhrn and Jon Eggen lead an agency effort to prepare a working rule draft. The draft was presented to the Advisory Council during the February 2008 meeting. The original draft had included only non-navigable waterways, but as a result of discussions in February, comparable provisions were prepared for navigable waterways. The structure of the proposal was that a general license would be available for the kinds of gravel extraction and prospecting activities which were believed to have minimal environmental impacts, but with Lake Michigan being disqualified from a general license. A revised draft was prepared and resubmitted to the Advisory Council for the April meeting.

During the April meeting, the Advisory Council responded favorably to most aspects of the revised rule draft. One notable exception was that concerns were expressed for allowing the use of motorized equipment to mine in navigable waters. Additional changes were incorporated to address this matter and others, and a proposal to address gravel extractions and prospecting, on both navigable and non-navigable waterways, was forwarded to the Natural Resources Commission.

The Commission considered the rule proposal during its May 21, 2008 meeting at McCormick’s Creek State Park, Spencer. Interested citizens, including several prospectors, appeared and expressed concerns for the regulatory consequences of the proposal. The Commission gave preliminary adoption to the provisions pertaining to gravel extractions and similar activities, but it remanded to the DNR and to the Advisory Council the portions of the rule pertaining to prospecting.

Following remand, a delegation of prospectors and representatives of the DNR and the Advisory Council viewed prospecting activities and their consequences at a site on Spring Creek in White County. As a result of the viewing, a better understanding of prospecting was obtained, and several modifications were made to the original regulatory proposal.

On August 13, 2008, the Advisory Council considered a new rule proposal directed exclusively to prospecting. Following an extended discussion, the Advisory Council recommended adoption of the new proposal with several amendments. These included clarifications of riparian rights, that the general license included the use of motorized equipment but the equipment must be hand-held, and a restriction to daylight hours of activities approved under the general license. The new draft, with modifications made during the August meeting, is included as Exhibit “A”.

Recommendation: The Department of Natural Resources and the Advisory Council recommend that the Natural Resources Commission give preliminary adoption to amendments to 312 IAC 6 and 312 IAC 10 to address prospecting on navigable waterways and non-navigable waterways, respectively, as set forth in Exhibit “A”.

TITLE 312 NATURAL RESOURCES COMMISSION

Proposed Rule
LSA Document #08-

DIGEST

Amends 312 IAC 6 for navigable waters and amends 312 IAC 10 for non-navigable waters to address general licenses and individual licenses for prospecting for hard mineral resources. Effective 30 days after filing with the Publisher.

312 IAC 6-2-3.8

312 IAC 6-2-6.8

312 IAC 6-5-10

312 IAC 10-2-24.5

312 IAC 10-2-33.3

312 IAC 10-5-11

NAVIGABLE WATERS

SECTION 1. 312 IAC 6-2-3.8 IS ADDED TO READ AS FOLLOWS:

312 IAC 6-2-3.8 “Hard mineral resources” defined

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1

Sec. 3.8. “Hard mineral resources” means naturally occurring alluvial deposits of the following:

- (1) Gold.**
- (2) Platinum.**
- (3) Silver.**
- (4) Lead.**
- (5) Copper.**
- (6) Diamonds and other gemstones.**
- (7) Other similar materials.** (*Natural Resources Commission; 312 IAC 6-2-3.8*)

SECTION 2. 312 IAC 6-2-6.8 IS ADDED TO READ AS FOLLOWS:

312 IAC 6-2-6.8 “Prospecting” defined

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1

Sec. 6.8. “Prospecting” refers to activities conducted in preparation for or to remove hard mineral resources. (*Natural Resources Commission; 312 IAC 6-2-3.8*)

SECTION 3. 312 IAC 6-5-10 IS ADDED TO READ AS FOLLOWS:

312 IAC 6-5-10 Prospecting in a navigable waterway

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1

Sec. 10. (a) This section governs prospecting in a navigable waterway which is subject to IC 14-28-1, IC 14-29-1, or IC 14-29-3.

(b) Unless otherwise provided in this section, a person must not engage in prospecting except as approved by the department in a written license.

(c) Without a written license or notice to the department, and except as provided in subsection (d), a person may engage in prospecting within the ordinary high watermark of a navigable waterway upon compliance with each of the following conditions:

(1) Lawful ingress to and egress from the navigable waterway is obtained.

(2) Written permission is obtained from any affected riparian owner.

(3) Prospecting is performed exclusively by one (1) or a combination of the following processes:

(A) Without the use of equipment.

(B) With the use of non-motorized equipment such as a pan, sluice box, or pick and shovel.

(C) With the use of suction equipment, including motorized equipment, having a hand-operated nozzle which has an opening not larger than five (5) inches in diameter.

(4) No mercury or other chemicals are used to assist with the recovery of hard mineral resources.

(5) Activities occur exclusively between sunrise and sunset.

(d) The following waterways do not qualify for prospecting under subsection (c) or under 312 IAC 10-5-11(c):

(1) Lake Michigan.

(2) Tippecanoe River, except Pulaski County and Starke County.

(3) Main Stem of White River.

(4) East Fork of White River from its confluence with the West Fork of the White River upstream to Williams Dam.

(4) Wabash River from the mouth of Big Pine Creek upstream to the mouth of Salamonie River, except Cass County and Miami County.

(5) Fish Creek from the Ohio State Line upstream to County Road 650 South in Steuben County.

(6) Big Creek from its confluence with the Wabash River upstream to State Road 66 Bridge in Posey County.

(e) Nothing in this section is intended to modify the rights of riparian owners.
(Natural Resources Commission; 312 IAC 6-5-10)

NON-NAVIGABLE WATERS

SECTION 4. 312 IAC 10-2-24.5 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-2-24.5 “Hard mineral resources” defined

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1

Sec. 24.5. “Hard mineral resources” means naturally occurring alluvial deposits of the following:

- (1) Gold.**
- (2) Platinum.**
- (3) Silver.**
- (4) Lead.**
- (5) Copper.**
- (6) Diamonds and other gemstones.**
- (7) Other similar materials.** (*Natural Resources Commission; 312 IAC 10-2-24.5*)

SECTION 5. 312 IAC 10-2-33.3 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-2-33.3 “Prospecting” defined

Authority: IC 14-10-2-4; IC 14-28-1-5; IC 14-29-1-8

Affected: IC 14-28-1; IC 14-29-1

Sec. 33.3. “Prospecting” refers to activities conducted in preparation for or to remove hard mineral resources. (*Natural Resources Commission; 312 IAC 10-2-33.3*)

SECTION 6. 312 IAC 10-5-11 IS ADDED TO READ AS FOLLOWS:

312 IAC 10-5-11 Prospecting in a non-navigable waterway

Authority: IC 14-10-2-4; IC 14-28-1-5;

Affected: IC 14-28-1; IC 14-29-1

Sec. 11. (a) This section governs prospecting in a non-navigable waterway which is subject to IC 14-28-1 and 312 IAC 10.

(b) Unless otherwise provided in this section, a person must not engage in prospecting in a non-navigable waterway except as approved by the department in a written license.

(c) Without a written license or notice to the department, and except as provided in subsection (d), a person may engage in prospecting in a non-navigable waterway upon compliance with each of the following conditions:

- (1) Lawful ingress to and egress from the waterway is obtained.**
- (2) Written permission is obtained from the property owner or owners.**
- (3) Prospecting is performed exclusively by one (1) or a combination of the following processes:**

(A) Without the use of equipment.

(B) With the use of non-motorized equipment such as a pan, sluice box, or pick and shovel.

(C) With the use of suction equipment, including motorized equipment, having a hand-operated nozzle which has an opening not larger than five (5) inches in diameter.

(4) No mercury or other chemicals are used to assist with the recovery of hard mineral resources.

(5) Activities occur exclusively between sunrise and sunset.

(d) 312 IAC 6-5-10 governs navigable waterways and also identifies waterways which are disqualified for prospecting under subsection (c).

(e) Nothing in this section is intended to modify the rights of riparian owners.
(Natural Resources Commission; 312 IAC 10-5-11)